

PATENT
Customer No. 22,852
Attorney Docket No. 06530.0307

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Adam L. COHEN et al.) Group Art Unit: 3736
U.S. Patent No.: 7,588,545 B2) Examiner: Emily M. LLOYD
Issue Date: September 15, 2009)
Application No.: 10/658,261) Confirmation No.: 4026
Filed: September 10, 2003)
For: A FORCEPS AND COLLECTION)
ASSEMBLY WITH ACCOMPANYING)
MECHANISMS AND RELATED)
METHODS OF USE)

BOX: PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST FOR RECONSIDERATION OF PATENT
TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)

In accordance with 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment of the above-identified patent. This Request is being filed within two months of issuance of the above patent, as required by 37 C.F.R. § 1.705(d), and includes a statement of fact pursuant to 37 C.F.R. § 1.705(b)(1).

I. Statement of the Facts Involved

A. Correct Patent Term Adjustment

According to information printed on the face of the above-identified issued patent, U.S. Patent No. 7,588,545 B2 (the '545 patent), this patent is entitled to 854 days of patent term adjustment.

Applicants have calculated a patent term adjustment of 1232 days, i.e., 388 additional days, based on the following facts:

The application for this patent was filed on September 10, 2003. A Restriction Requirement was mailed on March 13, 2007, creating a U.S. Patent and Trademark Office (PTO) delay of 853 days beyond the 14 months provided by 35 U.S.C. § 154(b)(1)(A)(i). A response to the March 13, 2007 Office Action was filed April 9, 2007, resulting in no reduction in patent term adjustment. On June 20, 2007, a first non-final Office Action was mailed, resulting in no increase in patent term adjustment. A response to the June 20, 2007 Office Action was filed on September 24, 2007, resulting in a delay by Applicants of 2 days beyond the 3 months provided by 35 U.S.C. § 154(b)(2)(c)(ii). A final Office Action was mailed on December 28, 2007, resulting in no increase in patent term adjustment. An Amendment and Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 was filed on April 4, 2008 in response to the December 28, 2007 final Office Action, resulting in a delay by Applicants of 7 days beyond the 3 months provided by 35 U.S.C. § 154(b)(2)(c)(ii).

A second non-final Office Action was mailed on April 17, 2008, resulting in no increase in patent term adjustment. A response to the April 17, 2008 Office Action was filed on July 15, 2008, resulting in no reduction in patent term adjustment. A second

final Office Action was mailed on November 25, 2008, resulting in a PTO delay of 10 day beyond the 4 months provided by 35 U.S.C. § 154(b)(1)(A)(ii). An Amendment and a Request for Continued Examination (RCE) under 37 C.F.R § 1.114 was filed on February 25, 2009 in response to the November 25, 2008 final Office Action, resulting in no reduction in patent term adjustment. A Notice of Allowance was mailed May 6, 2009, resulting in no increase in patent term adjustment.

The issue fee was paid on August 5, 2009, and the '545 patent issued on September 15, 2009.

Under *Wyeth v. Dudas*, the period of patent term extension under 35 U.S.C. § 154(b)(1)(B) begins to toll three years after the filing date of the application, i.e., three years from September 10, 2003. Thus, the period of patent term extension under 35 U.S.C. § 154(b)(1)(B) began to toll on September 10, 2006, and ended with the filing of a Request for Continued Examination (RCE) on April 4, 2008, resulting in 572 days of PTO delay under the three-year pendency rule. Of which, 184 days exceeding the three-year pendency date overlap with the earlier 863 days of PTO delay. Accordingly, the PTO delay under the three-year pendency rule is 388 days (572-184 = 388 days).

Wyeth v. Dudas instructs that the 388 days of PTO delay under the three-year pendency rule provided by 35 U.S.C. § 154(b)(1)(B) should be counted in addition to the PTO examination delay of 863 days under the 14 month delay provided by 35 U.S.C. § 154(b)(1)(A)(i) and 4 month delay provided by 35 U.S.C. § 154(b)(1)(A)(ii) offset by 9 days of Applicants' delay. Accordingly, the total of PTO patent term adjustment based

on delay is 1232 days. Applicants respectfully request that the current patent term adjustment be reconsidered.

B. Terminal Disclaimer

The above-identified issued patent is not subject to a Terminal Disclaimer.

C. Reasonable Efforts

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified issued patent, as set forth in 37 C.F.R. § 1.704, other than those identified above.

II. Fee

As required by 37 C.F.R. § 1.705(b)(1), this Request is accompanied by the required fee of \$200.00. If there are any additional fees due in connection with the filing of this Request for Reconsideration of Patent Term Adjustment, please charge them to Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: November 13, 2009

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